

SUBCHAPTER G : TARGET CONCENTRATION CRITERIA

§334.201. Purpose and Applicability.

(a) Purpose. The purpose of this subchapter is to establish the criteria by which target concentrations are established for leaking storage tank site cleanups.

(b) Applicability. The provisions of this subchapter are applicable to owners and operators of all underground storage tanks and petroleum product aboveground storage tanks unless otherwise specified in Subchapters A and F of this chapter respectively. These rules supersede previous cleanup guidelines as published in the January 1990, *Guidance Manual for LPST Cleanups in Texas*. All leaking storage tank cases which are not eligible for closure pursuant to the cleanup guidelines as published in the January 1990, *Guidance Manual for LPST Cleanups in Texas* as of the effective date of this rule shall be reevaluated by the owner and operator under this rule to establish target concentrations unless the executive director has provided written approval of a remediation plan to clean a site to a specific numeric target concentration and the remediation plan has been initiated prior to the effective date of these rules.

Adopted October 11, 1995

Effective November 8, 1995

§334.202. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Carcinogen - Substances which have been classified for human carcinogenic risk based on the United States Environmental Protection Agency's Weight of Evidence System of Carcinogenicity as:

- (A) Group A - Human Carcinogen;
- (B) Group B - Probable Human Carcinogen; or
- (C) Group C -Possible Human Carcinogen.

Carcinogen classification - The basis by which substances are classified for human carcinogenic risk based on the United States Environmental Protection Agency's Weight of Evidence System for Carcinogenicity:

- (A) Group A - Human Carcinogen;
- (B) Group B - Probable Human Carcinogen;
- (C) Group C - Possible Human Carcinogen;
- (D) Group D - Not Classifiable as to Human Carcinogenicity; and
- (E) Group E - Evidence of Non-Carcinogenicity for Humans.

Commercial/industrial land use - Any real property or portion of a property not currently being used for human habitation or for other purposes with a similar potential for human exposure. Examples of commercial/industrial land use include manufacturing; industrial research and development; utilities; commercial warehouse operations; lumber yards; retail gas stations; auto service

stations; auto dealerships; equipment repair and service stations; professional offices (lawyers, architects, engineers, real estate, insurance, etc.); medical/dental offices and clinics (not including hospitals); financial institutions; publicly owned office buildings; any retail business whose principal activity is the sale of food or merchandise; personal service establishments (health clubs, barber/beauty salons, mortuaries, photographic studios, etc.); churches (not including churches providing day care or school services other than during normal worship services), and motels/hotels (not including those which allow residence).

Compliance point - Location(s) selected between the source area(s) and the potential exposure point(s) where concentrations of regulated substances must be at or below the determined target concentrations in media (for example, groundwater, air, soil).

Direct exposure pathway - An exposure pathway where the point of exposure is at the source, without a release to any other medium.

Engineering control - Modifications to a site or facility (for example, slurry walls, capping, point of use water treatment) to reduce or eliminate the potential for exposure to a regulated substance.

Exposure - Subjection of an organism to the action, influence, or effect of a regulated substance (chemical agent) or physical agent. Exposure is quantified as the amount of the agent available at the exchange boundaries (e.g., skin, lungs, gut) and available for absorption by the human body.

Exposure assessment - The determination or estimation (qualitative or quantitative) of the magnitude, frequency, duration and route of exposure.

Exposure factors - Those factors used to derive an estimate of the exposure to a regulated substance.

Exposure pathways - The course a regulated substance takes from a source to an exposed organism. An exposure pathway describes a unique mechanism by which an individual or population is exposed to chemicals at or originating from a leaking storage tank site. Each exposure pathway includes a source, an exposure point, and an exposure route. If the exposure point differs from the source, a transport mechanism must also be present.

Exposure point - A location where human or environmental receptors can come into contact with regulated substances; also, a location which can be arbitrarily determined for purposes of estimating or measuring the concentration of regulated substances available for exposure.

Hazard index - The sum of two or more hazard quotients for multiple regulated substances and/or multiple exposure pathways which impact the same target organ or act by the same method of toxicity.

Hazard quotient - The ratio of a single substance exposure level over a specific time period to a reference dose for that substance derived from a similar exposure period.

Indirect exposure pathway - An exposure pathway with at least one intermediate release to any media between the source and the point(s) of exposure (for example, chemicals of concern from soil through ground water to the point(s) of exposure).

Institutional control - Legally binding instruments that the responsible party and the executive director may use as part of a corrective action plan to control or eliminate an otherwise viable exposure pathway to ensure that exposure to remaining regulated substances is reduced to a human health and

environmentally protective level. Institutional controls may include record notice, land use restrictions, land access restrictions and controls, or other legally binding and practically feasible instrument.

Maximum contaminant level or MCL - The maximum concentration in water of a regulated substance established by the United States Environmental Protection Agency under the Federal Safe Drinking Water Act, §141.

Non-carcinogen - Substances shown either through epidemiological studies or through laboratory studies to cause adverse health effects other than cancer.

Potential beneficial use - The potential use derived from a natural resource (for example, groundwater or surface water) to benefit a user if that resource were not affected by the released regulated substance. This will not consider uses that are unlikely to occur or otherwise extreme circumstances. Groundwater is considered to have a potential beneficial use as a drinking water source if the natural quality of the groundwater is less than 10,000 mg/l total dissolved solids content, yields of usable quantities of water are discharged to wells or springs, and/or there is a documented use of the groundwater.

Reasonable maximum exposure estimates - Combination of upper-bound and mid-range exposure factors to be used in dose estimation equations to provide a result which represents an exposure scenario that is both protective and reasonable; not the worst case. Exposure factors as presented in United States Environmental Protection Agency Office of Solid Waste and Emergency Response (OSWER) Directive 9285.6-03, March 25, 1991, or a superseding OSWER directive shall be considered appropriate values for estimation of the reasonable maximum exposure.

Receptor - Person, structure, utility, surface waters, and water supply wells that are or may be adversely affected by a release.

Residential land use - Property used for dwellings such as single family houses and multifamily apartments, children's homes and nursing homes. Because of the similarity of exposure potential and the sensitive nature of the potentially exposed population, day care facilities, educational facilities, hospitals, parks and like facilities shall also be considered "residential."

Risk - The probability that a regulated substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

Site - Includes all land, regardless of ownership considerations or property boundaries, which is directly affected by the regulated substance.

Target concentrations - Site-specific and chemical-specific concentration goals for affected media (for example, soil, air, groundwater, surface water) that are protective of human health and safety, and the environment.

Total excess cancer risk - The upper bound on the estimated excess cancer risk associated with exposure to multiple regulated substances and multiple exposure pathways.

Adopted October 11, 1995

Effective November 8, 1995

§334.203. Risk-Based Criteria for Establishing Target Concentrations.

Owners and operators shall apply the following risk-based criteria to evaluate sites and determine target concentrations.

(1) Plan A site evaluation criteria. The owner and operator should use Plan A established target concentrations to screen sites for closure, or use the Plan A criteria to establish target concentrations for the purposes of establishing a corrective action plan in accordance with §334.81 of this title (relating to Corrective Action Plans), or to evaluate the potential benefit of further site evaluation under paragraph (2) of this section.

(A) The owner and operator shall consider potential exposure to receptors through direct and indirect exposure pathways as required by the executive director and determine whether or not such pathways are complete or not. A pathway is considered complete if there is a source area, a transport mechanism and an existing or potential receptor.

(B) For complete pathways, target concentrations shall be calculated using equations and models, target risk goals, and exposure factors as established by the executive director.

(C) Target concentrations shall be based upon chemical property information defined by the executive director when such information is provided by the executive director.

(D) Target concentrations for indirect or cross-media pathways shall be based upon default media property assumptions defined by the executive director when site-specific media property information is not available.

(E) Target concentrations shall be based upon residential land use unless the owner and operator satisfies the requirements of §334.204 of this title (relating to Criteria for Selection of Land Use) to demonstrate commercial/industrial land use is more appropriate.

(F) The owner and operator shall use equations and models as required by the executive director to calculate target concentrations.

(G) Target air concentrations shall be evaluated when there is concern of a potential vapor hazard, or known or suspected indoor air exposure to regulated substances. Regulated substance concentrations in soils and groundwater are not to generate vapors in soil, air, utilities, or in the atmosphere which could cause an explosive atmosphere at any surface or subsurface structure. The presence of free product and associated level of vapors and the presence of conduits or pathways such as utility conduits, foundation piers, foundation cracks that may act as a transport pathway should be considered in this determination.

(H) Target surface water concentrations shall be as provided in the Texas Surface Water Quality Standards of Chapter 307 of this title (relating to Supplemental Surface Water Quality Standards) and Chapter 319 of this title (relating to General Regulations Incorporated Into Permits). If those values are not available or appropriate, then federal maximum contaminant levels (MCLs) promulgated under the federal Safe Drinking Water Act (42 United States Code Annotated §300f, et seq.) shall apply. If MCLs are not available or appropriate, then the target surface water

concentrations are to be based on reasonable maximum exposure expected to occur through human ingestion of the water.

(I) Target groundwater concentration criteria.

(i) The actual beneficial use or reasonable potential beneficial use of the affected groundwater shall be considered.

(ii) Groundwater with a natural total dissolved solids content of less than 10,000 mg/l and which is capable of yielding useable quantities of water to a well or spring shall be considered to have a potential beneficial use. When no site-specific data is available, the affected groundwater shall be considered to be potentially useable.

(iii) Residential groundwater ingestion shall be the default exposure pathway unless the owner and operator can show to the satisfaction of the executive director that the documented actual beneficial use of the affected groundwater is for a use other than drinking water purposes.

(iv) The individual carcinogenic risk must not exceed a range of 1×10^{-6} to 1×10^{-4} as required by the executive director for beneficial use groundwaters. For any carcinogen, if the federally promulgated MCL is a higher value (less stringent), then the MCL may be used.

(v) The hazard quotient for non-carcinogens shall not exceed unity (one) for beneficial use groundwater.

(vi) Only the removal of free product as required pursuant to §334.79 of this title (relating to Free Product Removal) and any subsequent monitoring as required by the executive director shall be necessary when the affected groundwater is of no potential beneficial use provided the owner and operator can document to the satisfaction of the executive director that the dissolved regulated substance concentrations for such groundwater that is less than 15 feet deep, is protective of potential direct contact by construction workers; that any explosive vapors, adverse affects to subsurface utilities, nuisance conditions, discharge of regulated substances to surface waters at unprotective levels, and plume expansion have been abated and should not occur in the future. When any of these conditions are not met with only free product removal, then target groundwater concentrations shall be established by the owner and operator so as to meet these conditions.

(vii) Target groundwater concentrations shall apply throughout the groundwater plume.

(viii) If remaining groundwater concentrations will discharge to a surface water body or other potentially usable aquifer at an unprotective level, then an additional compliance point shall be established for the point of discharge. The target groundwater concentration

to be applied at the additional compliance point(s) shall be based on the applicable target concentration for the receiving water.

(J) Target soil concentration criteria:

(i) ingestion of soils from ground surface to a depth of 15 feet for residential and commercial/industrial land uses unless the owner and operator can provide documentation to the satisfaction of the executive director that an alternate depth is more appropriate. Fifteen feet in the opinion of the commission represents a reasonable depth above which soil could be excavated and brought to the ground surface during construction activities;

(ii) inhalation of volatile and particulate emissions for residential and commercial/industrial land uses, when the soil from ground surface to a depth of two feet is affected, but not covered with an impermeable surface. If the owner and operator can provide sufficient evidence that the impermeable surface will be maintained and will prevent inhalation exposure, then inhalation from soil contaminants may be dropped from further analysis;

(iii) cross-media affects (e.g., soil leachate to groundwater);

(iv) the target soil concentration shall be the lower concentration of clauses (i), (ii), or (iii) of this subparagraph;

(v) reasonable maximum exposure expected to occur under both current and future land use for either residential or commercial/industrial as appropriate for the site;

(vi) maximum detected concentrations of regulated substances remaining in place;

(vii) the individual carcinogenic risk shall not exceed 1×10^{-6} for Class A and B carcinogens and 1×10^{-5} for Class C carcinogens; and

(viii) the hazard quotient must not exceed unity (one) for non-carcinogens;

(K) Target concentrations for soil, air and water shall also take into account other factors such as vegetation effects, sensitive environmental receptors, and aesthetic considerations (e.g., stained surface soils) as appropriate in the final analysis.

(L) The maximum levels of regulated substances remaining in all affected media shall meet the established target concentrations throughout the entire extent of affected area unless the owner and operator can demonstrate to the satisfaction of the executive director that such action is technically infeasible and that public health and the environment are otherwise adequately protected.

(M) The owner and operator shall submit reports in accordance with a schedule and in a format established by the executive director.

(N) The owner and operator or executive director may recommend institutional controls in accordance with §334.205 of this title (relating to Institutional Control Requirements) to reinforce exposure assumptions.

(O) Any necessary requirements as established by the executive director to protect public health, safety, and the environment.

(2) Plan B site-evaluation criteria. The owner and operator may elect to further evaluate a site under Plan B to determine more appropriate target concentrations for affected media which may be used to justify a closure recommendation, or for the purposes of establishing a corrective action plan in accordance with §334.81 of this title (relating to Corrective Action Plans).

(A) The owner and operator shall consider potential exposure to receptors through direct and indirect exposure pathways as required by the executive director and determine whether or not such pathways are complete or not. A pathway determined to be incomplete in the Plan A evaluation does not need to be reevaluated under this subsection.

(B) For complete pathways, target concentrations shall be calculated using equations, target risk goals, and exposure factors as established by the executive director.

(C) Target concentrations shall be based upon chemical property information defined by the executive director when such information is provided by the executive director.

(D) Target concentrations for indirect or cross-media pathways shall be based upon default media property assumptions and models defined by the executive director when site-specific media property information is not available. Use of site-specific media property information is encouraged as part of this evaluation. If the owner and operator wish to use alternative models, prior concurrence from the executive director shall be obtained.

(E) The executive director may require owners and operators to collect additional site information prior to or after the evaluation of the site under this section to substantiate the conclusions of the evaluation.

(F) For known or suspected carcinogens, the individual and cumulative carcinogenic risk of 1×10^{-6} to 1×10^{-4} as required by the executive director.

(G) Target concentrations are to be established at concentrations which do not exceed a hazard index of unity (one) for non-carcinogens.

(H) The owner and operator may apply target concentrations for direct exposure pathways calculated under paragraph (1) of this section at reasonable exposure points instead of the source area unless the source area is a reasonable exposure point. All exposure points assumptions are subject to approval by the executive director.

(I) The executive director may allow use of compliance points to serve as the basis for meeting target concentrations for indirect exposure pathways provided:

(i) the proposed compliance point locations are consistent with the results of the exposure assessment;

(ii) the proposed compliance point locations are upgradient of actual receptors;

(iii) the proposed compliance point locations will not allow unaffected receptors to become affected;

(iv) the proposed compliance point locations are accessible for monitoring/sampling;

(v) karst, fracture controlled, or otherwise highly complex hydrogeologic system is not involved;

(vi) estimates or predictions of compliance point concentrations and degree and rate of transport of regulated substances are verified with site monitoring data. Where site monitoring data and contaminant fate and transport modelling results yield conflicting information, the executive director shall place more value on the monitoring data;

(vii) the executive director may require the use of specific contaminant fate and transport models; and

(viii) target concentrations shall be met at all points beyond (downgradient of) the compliance point(s).

(J) When the criteria for the use of compliance points as required in subparagraph (I) of this paragraph cannot be met, then the target concentrations for indirect exposure pathways shall be met throughout the plume.

(K) Target concentrations for soil, air, and water shall also take into account other factors such as vegetation effects, sensitive environmental receptors, and aesthetic considerations (e.g., stained surface soils) as appropriate in the final analysis.

(L) The owner and operator or executive director may recommend the use of specific institutional controls to control or eliminate potentially viable exposure pathways, and to reinforce exposure assumptions and future land use assumptions.

(M) The owner and operator shall submit reports in accordance with a schedule and in a format established by the executive director.

(N) The owner and operator shall meet all requirements imposed by the executive director.

(3) Health-based target concentrations established pursuant to paragraphs (1) or (2) of this section shall be based upon toxicological information current at the time the report is submitted to the commission. Toxicological information shall be from the following sources in order of listing:

(A) United States Environmental Protection Agency Integrated Risk Information System (IRIS);

(B) Health Effects Assessment Summary Table (HEAST);

(C) United States Environmental Protection Agency Criteria Documents;

(D) Agency for Toxic Substances and Disease Registry (ATSDR) Toxicological Profiles; and

(E) other scientifically valid published sources that are widely accepted.

(4) Target concentrations shall be based on the particular land use (residential or commercial/industrial) as defined in §334.202 of this title (relating to Definitions) of each affected property.

(5) The exposure assessment and determination of target concentrations conducted pursuant to paragraphs (1) or (2) of this section shall consider:

(A) the physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(B) the hydrogeologic characteristics of the facility and the surrounding area;

(C) the proximity, quality, and current and future uses of nearby surface water and groundwater;

(D) the potential effects of residual contamination on nearby surface water and groundwater;

(E) an exposure assessment considering exposure pathways as requested by the executive director;

(F) any information assembled in compliance with this subchapter; and

(G) any additional considerations as established by the executive director.

(6) After receipt of a written statement by the executive director that all corrective action regulations have been met and that no further corrective actions are warranted, then the case shall be considered closed unless a substantial change in circumstances results in an unacceptable risk to human health or the environment. A substantial change in circumstance shall include, but is not limited to:

(A) a failure to maintain the obligations of an institutional control as set out in §334.206 of this title (relating to Criteria for Institutional Control Use);

(B) a change in land use from a less sensitive land use to a more sensitive land use, such as commercial/ industrial to residential;

(C) an actual exposure condition is determined to be occurring at levels not protective of human health and safety, or the environment. For purposes of this subchapter, changes in toxicity values or general procedures utilized to determine target concentrations shall not be considered a substantial change in circumstances, unless these changes are of such magnitude to present an unacceptable threat to human health and safety, or the environment when evaluated for future exposure conditions based on site-specific considerations; or

(D) new information indicates that the regulated substances at the facility or affected area were not sufficiently characterized such that an unacceptable threat to human health and safety, or the environment continues to exist.

Adopted October 11, 1995

Effective November 8, 1995

§334.204. Criteria for Selection of Land Use.

The owner and operator shall address each of the following when determining the use of the affected property(ies).

(1) The past and current use of the affected property. Residential land use areas should be assumed to remain residential. Properties with past and/or current commercial/industrial land use which are surrounded by commercial/industrial facilities can be assumed to remain the same unless such is clearly not appropriate.

(2) Properties for which the future use of the property is unknown (property is vacant or for sale) shall assume residential land use unless the owner and operator can demonstrate to the satisfaction of the executive director that the past use of the property and use of surrounding properties clearly suggests future use of the property for residential land use is unlikely.

(3) For property currently vacant, or not owned by the owner or operator, the property owner should be interviewed to establish the intended future use of the property. Statements explaining planned future land use and signed by the affected property owners should be provided to the commission for each affected property to verify that the property owners have been consulted.

(4) For property located within the jurisdictional area of a zoning authority, the owner and operator may provide documentation that the property is zoned for residential, commercial, or industrial use.

(5) Current and planned surrounding land use patterns of local planning board.

(6) Other information as requested by the executive director to verify the appropriate categorization of land use.

Adopted October 11, 1995

Effective November 8, 1995

§334.205. Institutional Control Requirements.

When institutional controls are assumed in determining target concentrations, the owner and operator shall file institutional control requirements in the county deed records of the county or counties in which the property affected by the institutional control is located. Institutional controls shall be required when such action is needed to demonstrate control or elimination of exposure pathways in a manner consistent with §334.203(1) or (2) of this title (relating to Risk-Based Criteria for Establishing Target Concentrations). Institutional controls may also be required to provide notice to future land owners that residual regulated substances are present at the site when the site is considered protective so long as there is no substantial change in site conditions or use of the property which would change the exposure conditions. All institutional control information filed in the county deed records must be written such that a layperson can easily understand it.

(1) Institutional controls may be required as part of the corrective action plan when:

(A) the residential cumulative carcinogenic risk level exceeds 1×10^{-5} for Class A and B carcinogens for residential use properties (child or adult);

(B) the commercial/industrial cumulative carcinogenic risk level exceeds 1×10^{-5} level for Class A and B carcinogens for commercial/industrial use properties;

(C) an engineering or legal control is needed to eliminate an otherwise viable exposure pathway;

(D) sites not zoned commercial/industrial that are to close under commercial/industrial land use assumption and adjoin residential property when the same site under a residential land use assumption would exceed a cumulative carcinogenic risk of 1×10^{-4} or a hazard index of unity (one); and

(E) when requested by the executive director.

(2) The owner and operator or the executive director may recommend the specific conditions of the institutional control. In the event the executive director and the owner and operator are unable to agree upon a suitable institutional control, then the executive director will require target concentrations to be established so as to eliminate a need for an institutional control.

(3) Institutional controls may only be employed on sites when the owner(s) of the affected property(ies) is/are in agreement with the placement and the conditions of the institutional control. A written statement signed by the owner, or their designated agent, of each property directly affected by the placement of the institutional control must be provided to the executive director by the owner and operator which indicates that the owner of the affected property understands the requirements set forth in §334.206 of this title (relating to Criteria for Institutional Control Use) and agrees with the placement and terms of the institutional control.

Adopted October 11, 1995

Effective November 8, 1995

§334.206. Criteria for Institutional Control Use.

(a) Within 90 days of the date the executive director requests the filing of an institutional control, the owner and operator must provide a certified copy of the filed institutional control stamped by the County Clerk(s), listing the page and volume of the record notice to the executive director. The filed institutional control must contain:

(1) the name and address of the owner and operator of the tract of land to which the institutional controls are applicable, and a metes and bounds description of the portion(s) of the tract of land affected by the institutional control as agreed to by the executive director;

(2) a plat map clearly demarcating the portion(s) of the tract of land to which the institutional control applies. The map must contain a north arrow, a correlating map scale, and a legend identifying any used symbols or abbreviations;

(3) a certification by a registered professional land surveyor so registered by the Texas Board of Professional Surveying attesting to the accuracy of the descriptions provided in paragraphs (1) and (2) of this subsection;

(4) the terms of the institutional control as presented in §334.208 of this title (relating to Model Institutional Control);

(5) a statement that the executive director must be notified in writing at least 120 days prior to changes in site use or site conditions which violate the terms of the institutional control, when the terms of the institutional control place use conditions on the affected area;

(6) a statement that information and documents concerning the corrective action effort and contaminant conditions are available for inspection upon request at the Texas Natural Resource Conservation Commission or subsequent agency;

(7) a statement that residual levels of regulated substances are present at the site and that generation of the affected soils or water may require special handling and disposal and/or treatment in accordance with applicable state and federal regulations; and

(8) other information as requested by the executive director.

(b) The current or future owner of the property affected by the institutional control shall notify the executive director in writing at least 120 days prior to changing the use or altering the condition of the site such that the conditions specified in the institutional control would no longer be met. The owner and operator will then provide a reevaluation of the site to the executive director within 30 days of the date of notification such that the property owner is able to demonstrate:

(1) that levels of regulated substances have degraded such that human health and safety, and the environment are protected under the planned land use or site condition change;

(2) the site will be adequately cleaned to meet human health and environmental protective levels for the planned land use or site condition change; or

(3) application of a revised institutional control will ensure adequate protection of public health and safety and the environment. The revised institutional control shall conform with all requirements of this section relating to institutional controls.

(c) When the implementation of institutional controls by the owner and operator is a condition of site closure, and such condition was stipulated in a final concurrence letter issued by the executive director, the closure status is valid only so long as the conditions set forth in the institutional control agreed to by the executive director and filed in the county deed records are met. When the conditions of the institutional control are not met, then the conditions for closure are no longer met, and site closure status is nullified. The current or future owner and operator affected by the institutional control shall notify the executive director within 24 hours of the discovery that the conditions of the institutional control are not met. When the conditions of the institutional control are not met and the change in site use or condition was not coordinated as defined in subsection (a)(5) of this section, then

the future or current owner and operator is out of compliance pursuant to §334.81(h) of this title (relating to Corrective Action Plan) and may be subjected to formal enforcement proceedings.

(d) When appropriate analytical evidence demonstrates to the reasonable satisfaction of the executive director that concentrations of residual substances at the site no longer exceed the target risk goals by process of natural degradation or other active site cleanup, then the executive director shall agree by written concurrence to the placement of a statement in the county deed records by the current or future owner of the land which nullifies the need for the institutional control and indicates that residual substance concentrations meet health protective levels. Under this condition, the final concurrence letter shall remain in effect.

Adopted October 11, 1995

Effective November 8, 1995

§334.207. Waste Management.

The future removal of any soil or water affected by the residual regulated substances must be properly handled and disposed and/or treated in accordance with all applicable state and federal regulations, and in such a way so as to protect public health and safety, and the environment.

Adopted October 11, 1995

Effective November 8, 1995

§334.208. Model Institutional Controls.

Model Institutional Control for Properties.

STATE OF TEXAS
_____ COUNTY

NOTICE OF (type of substance) CONTAMINATED SITE

KNOW ALL MEN BY THESE PRESENTS THAT:

Pursuant to the rules and/or requirements of the Texas Natural Resource Conservation Commission ("TNRCC"), this document is hereby filed in the Deed Records of _____ County, Texas in compliance with the said requirements of the TNRCC:

I

This notice pertains to the tract of land (hereinafter, the "Property") described within Exhibit "A" attached hereto and incorporated herein as if set forth at length. The Property is located at _____, in _____, (_____ County), Texas. The Property is the former location of a storage tank system that leaked and released (type of substance) into the (list all affected media). Residual subsurface contamination remains at the Property. Notwithstanding such residual contamination, the

TNRCC has determined that no additional remediation of the Property is required as of the date of this filing, subject to the provisions of Paragraph II below regarding the use of the Property.

II

Cleanup levels established for the Property were based on current and future use of the site for (residential or commercial/ industrial) purposes. Without limitation of any other permissible uses, the use of the Property is suitable for (residential or commercial/industrial) purposes. The corrective action plan (does/does not) require continued (post closure care, engineering control measures, or legal control). (Describe) (Add next sentence when the terms of the institutional control place use conditions on the affected area.) Notwithstanding the foregoing, the current or future owner shall notify the TNRCC in writing at least 120 days prior to changes in site use or site condition which violate the terms of this notice.

The corrective action plan developed for this site reduces site risks to meet protection requirements for the site conditions at the time of this filing. However, persons who will be conducting subsurface construction activities such as, but not in way of limitation, the excavation of soils, installation or repair of subsurface utilities, installation of foundation piers, groundwater extraction, or other such activity may encounter the soils, soil vapors, or groundwater which have been affected by the release. The owner of the Property at the time of any future subsurface construction activities must comply with all environmental, worker protection and other laws, rules and regulations then applicable to the Property.

III

The current owner of the Property and/or any facility thereon is (Landowner), whose address is (Street address), (City), (State) (Zip) where more specific information may be obtained from the agents or assigns thereof. The current operator of the Property and/or any facility thereon is (Operator), whose address is (Street address), (City), (State), (Zip).

IV

This deed notice is not a representation or warranty by the TNRCC as to the suitability of the Property described within Exhibit A for any particular use or purpose, nor does it constitute any guarantee by the TNRCC that additional remediation will not be required in the future. Further information concerning this matter may be found in the TNRCC Underground Storage Tank Notice of Registration No. _____ file and Leaking Petroleum Storage Tank ("LPST") No. _____ file, which are available for inspection upon request at the office of the TNRCC in Austin, Texas.

EXECUTED this the _____ day of _____, 19__.

Landowner or Authorized Representative

By: _____

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me on _____, 19____, by (Owner).

Notary Public in and for the State of
(State)

My Commission Expires:

Typed or Printed Name of Notary

Adopted October 11, 1995

Effective November 8, 1995

Texas Natural Resource
Conservation Commission
Chapter 334
Underground and Aboveground Storage Tanks

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Addition of (New): §§334.201-334.208
Date Adopted: October 11, 1995
Date Filed with the Secretary of State: October 18, 1995
Date Effective: November 8, 1995